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No. 72-966

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

CONFEDERATION LIFE INSURANCE COMPANY,
Petitioner,

v.

REYES ARIDA CONTE,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

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REPLY BRIEF FOR PETITIONER

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Respondent states without qualification that the Florida courts have applied local Florida law in allowing him to recover in dollars in Florida on his contract of insurance with petitioner Confederation Life Insurance Company. Thus, as stated in the petition, the issues of constitutional law and international law that petitioner poses here, which arise from the Florida courts' choice of Florida law instead of Cuban law, are not clouded by any vagrant possibility that Florida may have been applying the local, Canadian or Ontario, law of Confederation's domicile.

The issues of federal law are therefore sharply focused. Respondent's attempts to suggest a basis on

which the issues can be resolved in favor of sustaining the action of the Florida courts are hopelessly inadequate, for reasons indicated below.

I

Respondent's contract with Confederation was a 20-year endowment life insurance policy issued in Cuba in 1944. In exchange for respondent's premiums Confederation promised to pay the amount of the policy to him on the twentieth anniversary date of the contract if he was living or to his heirs if he died before that date. Respondent was alive on the anniversary date, in 1964, and Confederation at that time became obligated to him under the terms of its contract.

Under Cuban law the obligation, as we have explained in the petition, was to pay the respondent 4,000 pesos in Havana. The contract was made in Havana, was performable by its terms in Havana and was made with a Cuban citizen and domiciliary, the respondent. Moreover, by decrees of the duly constituted Cuban government withdrawing Cuban legal tender status from the currency in which the contract was originally expressed, United States dollars, and forbidding the payment of Cuban obligations otherwise than in Cuban pesos, the obligation could be satisfied only by payment in pesos in Cuba. Confederation stood and stands ready to make such payment.

Respondent attempts to bring himself under the doctrine, as it once might have been narrowly understood, of *Confederation Life Ass'n* v. *Vega,* 207 So.2d 33 (Fla. Dist. Ct. App.), *aff'd,* 211 So.2d 169 (Fla.), *cert. denied,* 393 U.S. 980 (1968), by urging that the endowment feature of his original life insurance con-

tract was the equivalent of an option pursuant to which a second contract was made in Florida. The suggestion is wholly lacking in substance.

In *Vega* the insured exercised in Florida a cash surrender option contained in a policy that had been issued in Cuba. It was said by the Florida court that this constituted the making of a second contract in Florida. Even as applied in *Vega*, this "second contract" doctrine is without support in authority and is thoroughly unsound. But respondent's attempt to stretch the doctrine so as to create a second contract upon the mere satisfaction of a condition—survival for 20 years—lacks even the superficial plausibility of the *Vega* construct. To say, as respondent does (Br. 6), that a conditional contract is not completed until the condition occurs is contrary to the most elementary principles of contract law. A contract is completed by the acceptance of an offer. The fact that the offer contains a promise that is conditioned or calls for a conditional promise in return—as insurance contract offers do, almost by definition—does not make the contract any less complete when the last act necessary to constitute acceptance occurs. 1 Corbin, *Contracts* § 83 (1963). In this case the relevant acts necessary to complete the contract took place in Cuba, not Florida.

The Florida District Court of Appeal in this case expressly rejected the argument that respondent now advances, stating: "We are unable to discover a second contract with a situs in the United States under these facts." (Pet. 3a). The Florida Supreme Court, although it allowed respondent an even larger dollar recovery than did the District Court of Appeal, did not even hint that it disagreed with the District Court of Appeal on the second contract issue.

Instead, the Florida Supreme Court held in substance that Florida law was applicable to the Cuban policy here involved without regard to "second contracts," Canadian law, or any other ameliorative qualification. If there was any doubt about the position of the Florida Supreme Court when *Confederation Life Ins. Co.* v. *Lara,* No. 71-1487, was pending in this Court, it has now evaporated, and the constitutional and other federal issues are squarely and unavoidably presented.

II

Respondent makes an alternative argument for the lawfulness of applying Florida law. Forgetting the alleged second contract, he urges that Florida has sufficient contacts with the only real contract in the case, the contract that in 1944 was made in Cuba to be performed there, to justify applying its law. (Resp. Br. 6-10)

Only two contacts are mentioned.

First, respondent points out that Confederation does business in Florida and has assets in the United States. Confederation's holding of assets in the United States is utterly immaterial as a contact with Florida. Confederation's doing business in Florida is probably a sufficient foundation for personal jurisdiction over it on the part of the Florida courts, but the satisfaction of jurisdictional requisites has never been regarded as conclusive of or even especially pertinent to choice of law. If the forum state could apply its law to any defendant over whom its courts have jurisdiction, there would be scant need for choice-of-law rules. Nor would cases such as *Home Ins. Co.* v. *Dick,* 281 U.S. 397 (1930), and *Hartford Accident & Indem. Co.* v.

Delta & Pine Land Co., 292 U.S. 143 (1934), holding unconstitutional the application of forum law to transactions involving parties over whom the courts had jurisdiction, have been decided as they were.

The second contact respondent mentions is only slightly more serious. He says that he lives in Florida and attempts to bolster this assertion by adding that he is among 200,000 Cuban refugees who similarly live in Florida. The plaintiff in *Home Ins. Co.* v. *Dick, supra,* was a citizen and permanent resident of Texas who had invoked the legal system of his own state; he was, if you will, a representative of that state's entire citizenry, not just of a few thousand residents of a particular kind (compare Resp. Br. 7-8). This Court said: "The fact that Dick's permanent residence was in Texas is without significance." *Id.* at 408. That ruling alone concludes respondent's argument. But the fact is that, even were the residence of respondent and of other Cuban refugees in Florida sufficient to justify the application of Florida law, the Florida courts obviously do not look upon the state's role as defender of the interests of the Cuban refugees within its borders as justification for their decisions imposing liability to pay dollars on Cuban insurance contracts. The *Lara* case, which respondent says raised the same issues as this case, demonstrates that. In the *Lara* case four of the six beneficiary-plaintiffs resided elsewhere than in Florida. One of them still lived in Havana.

III

In his final argument respondent rests upon the surprising assertions that "mandatory application of the Act of State Doctrine has not been the practice of the

courts in the United States" (Br. 10) and that "this court narrowly applies the Act of State Doctrine" (Br. 11). These statements and the argument based upon them simply cannot be squared with what this Court held and said in *Banco Nacional de Cuba* v. *Sabbatino,* 376 U.S. 398 (1964), or more recently, in *First Nat'l City Bank* v. *Banco Nacional de Cuba,* 406 U.S. 759 (1972), about the duty of courts in the United States to respect acts of foreign governments affecting rights and obligations within their territories. We have quoted the act-of-state rule before, and we quote it again here: "[W]hen it is made to appear that the foreign government has acted in a given way on the subject-matter of the litigation, the details of such action or the merit of the result cannot be questioned but must be accepted by our courts as a rule for their decision." *Banco Nacional de Cuba* v. *Sabbatino, supra* at 418, quoting *Ricaud* v. *American Metal Co.,* 246 U.S. 304, 309 (1918).[1]

Here Cuba has acted upon the subject-matter of this litigation, the respondent's life insurance contract, in such a way as to make it a policy payable only in pesos and only in Havana. Cuba had full power to act as it did, and no question could possibly be raised under international law concerning its action. (See Pet. 14-15.) The passage from *Sabbatino* that is quoted at page 11 of the brief in opposition, which talks in terms of the Court's not examining the validity of a taking

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[1] If respondent's statement that the act of state doctrine is not "mandatory" is intended to suggest that state courts may disregard the doctrine as they choose, then respondent's position is squarely inconsistent with *Sabbatino.* This Court made clear in *Sabbatino* that the constraints of the act of state doctrine are as binding upon the state courts as upon federal courts. 376 U.S. at 421-24.

of property by a foreign government within its own territory, was addressed to the argument that was made by the respondents in *Sabbatino* that the act of state doctrine should not be applied where a taking violates international law because it is uncompensated or discriminatory.[2] The act of state doctrine is fully applicable to legislation or decrees affecting contractual interests as well as tangible property. (See Pet. 15 n.9.) *Sabbatino* did not suggest the contrary.

Respondent wholly misconceives the course of decisions of the Florida courts as they relate to the International Monetary Fund agreement. (Br. 11-12.) At one time Cuba was a member of the International Monetary Fund, and the agreement to which it and the United States were parties was one of the grounds of decision in *Confederation Life Ass'n* v. *Ugalde,* 164 So.2d 1 (Fla.), *cert. denied,* 379 U.S. 915 (1964), denying recovery on a Cuban insurance contract in part because under the agreement the United States was bound to respect Cuba's monetary laws. (See Pet. 6-7.) Cuba has withdrawn from the IMF agreement, and the argument based on the agreement has of course not been advanced since the withdrawal. But Cuba's withdrawal certainly had nothing like the effect that respondent attributes to it of precluding courts in the United States from respecting Cuban monetary decrees. There is nothing in the agreement, as respondent asserts, that prevents the courts of a member country, in the application of ordinary choice-of-law rules or in obedience to the act of state doctrine, from giving effect to a non-member's monetary laws.

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[2] The quoted passage, interestingly, demonstrates that the cases that respondent relies on in which confiscatory foreign decrees were ignored (Br. 12) are no longer authoritative after *Sabbatino.*

CONCLUSION

The general importance of the issues raised in this case has been reemphasized by the personal delivery by the Canadian Ambassador to the Acting Legal Adviser of the Department of State of a note expressing the concern of the Canadian Government over the course of judicial decisions in Florida and its desire that the judgment in this case should be reviewed by this Court. The note and the Acting Legal Adviser's letter of transmittal to the Solicitor General have been submitted to the Court by the Solicitor General.

Respondent says nothing that detracts from the importance of the issues in the case. And, as has been seen, his arguments that the issues were properly resolved below are unsubstantial. The petition should be granted.

Respectfully submitted,

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